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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re T.R. et al., Persons Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

VANESSA R.,

Defendant and Appellant.

F078665

(Super. Ct. Nos. 517889, 517890,
517891)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant and
Appellant.

Thomas E. Boze, County Counsel, and Maria Elena R. Ratliff, Deputy County
Counsel, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Snauffer, J. and DeSantos, J.

Vanessa R. (mother) appeals from the juvenile court's orders issued at a contested hearing under Welfare and Institutions Code¹ section 366.26 on November 16, 2018, terminating her parental rights to her now three-year-old daughter, T.E.G., and four- and five-year-old sons, T.J.G. and T.E.R., respectively. She contends the court's refusal to continue the hearing for nine minutes to allow her to appear and offer evidence was an abuse of discretion. We concur and reverse.

PROCEDURAL AND FACTUAL SUMMARY

This appeal marks our second review of the dependency proceedings in this case. In November 2018, we denied extraordinary writ petitions filed by mother and Thomas G., the children's father,² from the 12-month review hearing in July 2018 terminating reunification services and setting a section 366.26 hearing. (Cal. Rules of Court, rule 8.450.)³ On our own motion, we take judicial notice of our opinions in those cases. (Evid. Code, §§ 452, subd. (d); 459, subds. (a), (b) & (c).)

Dependency proceedings were initiated in March 2017 after the parents failed to adhere to a safety plan to protect the children from domestic violence. The agency took the parents' six children, who ranged in age from one to 15, including the subjects of this appeal, into protective custody and filed a dependency petition on their behalf under section 300, subdivision (b)(1) (failure to protect).⁴ Allegations against the parents included arrests for domestic violence, drug possession and theft, among others, and child abuse.

¹ Statutory references are to the Welfare and Institutions Code.

² Thomas G. is the presumed but not the biological father of T.E.R.

³ *Vanessa R.* (Nov. 9, 2018, F077869) [nonpub. opn.] and *Thomas G.* (Nov. 9, 2018, F077861) [nonpub. opn.].

⁴ The petition also alleged one count under section 300, subdivision (g) (no provision for support), alleging T.E.R.'s father was unknown and failed to provide for the child's care and support.

The juvenile court exercised its dependency jurisdiction over the children, removed them from parental custody and ordered the parents to participate in mental health, domestic violence and parenting services through Sierra Vista Child Family Services (Sierra Vista) in Stanislaus County and substance abuse services through one of three Stanislaus County programs, including Stanislaus Recovery Center, or other programs approved by the agency.

By the six-month review hearing scheduled for February 2018, the 14- and 15-year-old children had run away and their whereabouts were unknown, the 12-year-old was in foster care in Merced County and the remaining children were in a Stanislaus County foster home. The parents were living with the maternal grandmother in Santa Clara County. They were employed and father was participating in outpatient services at Stanislaus Recovery Center. However, he tested positive for alcohol and he was referred for inpatient treatment. Mother was not participating in substance abuse services. The parents asked to have their case transferred to Santa Clara County to facilitate visitation.

The parents appeared at the six-month review hearing held in March 2018. The juvenile court explained it could not transfer the case to Santa Clara County at that time but said the agency had located some services for them there and was in the process of locating additional services. The court found the agency provided the parents reasonable reunification services and their progress was limited. The court continued services to the 12-month review hearing and ordered the agency to file an updated services plan. The agency filed an updated services plan in April with only one substantive change—visitation was to be supervised. Otherwise, the plan contained the same service components, which were required to be completed through the Stanislaus County programs previously identified or other programs approved by the agency.

By the 12-month review hearing scheduled for May 2018, the parents were participating in services in Stanislaus and Santa Clara counties. The two oldest children

were in juvenile hall in Santa Clara County and the other children remained in their foster home placements. The agency stated it was having difficulty obtaining appropriate services for the parents in Santa Clara County and recommended the juvenile court continue reunification services and transfer the case there.

The juvenile court convened but continued the 12-month review hearing on May 11 because the agency was reconsidering its recommendation due to the parents not complying with the services plan and refusing to drug test. The court ordered the parents to submit to a hair follicle test that same day and continued the hearing until the end of the month. After the hearing, the parents went to the testing facility but left before submitting a hair sample. The agency asked them to submit to hair follicle analysis on May 21, but they did not go to the testing facility.

In an addendum report, the agency recommended the juvenile court terminate reunification services and set a section 366.26 hearing for the three youngest children and select a permanent plan of long-term foster care for the older children because the parents had not meaningfully engaged in services. Mother completed an intake with Family and Children Services on March 20, 2018, and had appointments for March 28 and April 20 that she did not attend. She was discharged from the program on May 23 for poor attendance and participation. She attended an appointment with her therapist at Sierra Vista on April 19 but cancelled her appointment the following week, citing car problems. On May 3, she cancelled her appointment, stating she did not have gas to travel to the appointment. She did not reschedule her appointments. Father attended one individual counseling session at Sierra Vista on March 15 and was referred for domestic violence offender and anger management classes but did not attend. He also failed to complete the individual and homework components of the parenting class at Sierra Vista and was discharged from Family and Children Services for excessive absences and failure to engage in services. The parents also refused to provide hair follicle samples for analysis

on April 20, May 11, and May 21. Mother tested positive for amphetamine and methamphetamine on April 19 during a visit. Father did not attend the visit because he knew he was going to be tested.

The agency offered to give the parents bus passes and arrange train/bus transportation from Santa Clara County to Stanislaus County. The parents declined, citing the travel time, inability to arrive timely for appointments and the lack of a hotel room for overnight lodging. The agency also contacted numerous agencies to arrange services in Santa Clara County, but none of them would contract with the agency.

The juvenile court conducted the contested 12-month review hearing in July 2018. The parents argued the agency's failure to provide them services in San Jose was unreasonable because the driving distance required was prohibitive. Mother testified she was participating in her court-ordered services and could complete them if given the opportunity. She denied that the test results from April 19 could be positive for methamphetamine, claiming she was "clean" on that day. The social worker testified she asked the parents to submit to hair follicle testing six times since the six-month review hearing in March 2018 but they did not. All the services required by the parents' reunification plans were in place either through programs in Stanislaus County or Santa Clara County.

The juvenile court found the reunification services provided were reasonable, but the parents did not make "any real attempts to resolve the issues." The court terminated reunification services and set a section 366.26 hearing for November 16, 2018 as to the three youngest children and ordered the other three children into long-term foster care. We affirmed the court's reasonable services finding, which the parents challenged in their writ petitions from the 12-month review hearing.

The agency recommended the juvenile court find the children were likely to be adopted and it would not be detrimental to them to terminate parental rights. The

children had been in the home of the prospective adoptive parents since October 2017. They were doing very well there and were bonded to the adoptive parents. The agency's report for the hearing indicated the parents did not regularly visit the children, in part because they lacked reliable transportation.

On November 16, 2018, at 1:46 p.m., the juvenile court called the contested section 366.26 hearing scheduled for 1:30 p.m. The parents were not present. Mother's attorney informed the court she contacted him at 7:52 a.m. and stated they were having car problems. Just after the court called the case, she called her attorney and stated they were approximately seven minutes away. He asked the court to continue the case until 2:00 p.m. The court denied the request stating,

"I'm not willing. Because I came out shortly before 1:30 [p.m.]. I did not call the case. But there was representation made that the parents were running late and they were in Patterson and they were 20 minutes out, and that was a few minutes before 1:30 [p.m.].

"It's now 1:51 [p.m.]. The parents are not here. There is no good reason why the parents could not be here on time. The Court's time is valuable, and I'm not going to continue this matter and then end up not being able to have sufficient time to hear this case. When and if the parents arrive, they are certainly welcome into the courtroom at that time."

The juvenile court asked mother's attorney if he wanted to make an offer of proof. He said his communication with mother was limited but the three older siblings were also on their way and wanted to object to the termination of parental rights and request that their younger siblings be placed with relatives. The court stated the older siblings would have to file a section 388 petition and it was not inclined to move the children because they had been with the prospective adoptive parents for 13 months. Father's attorney objected but offered no evidence.

The juvenile court found the children were likely to be adopted and it would not be detrimental to them to terminate parental rights. As to the latter finding, the court

commented that neither parent regularly visited the children and therefore failed to satisfy the first prong of the beneficial relationship exception to adoption. The court terminated parental rights. Asked if there was anything else, mother's attorney stated he had a note indicating mother was there. The court stated it was not going to recall the case.

DISCUSSION

Mother claims the juvenile court erred when it denied her attorney's request for a continuance of the section 366.26 hearing because it deprived her of the opportunity to present evidence about the beneficial parent-child and sibling relationship exceptions to adoption contained in section 366.26, subdivision (c)(1)(B)(i) and (v).

The agency refutes mother's claim the juvenile court abused its discretion, asserting mother received notice of the hearing and had ample opportunity to appear on time. Any error, it alternatively argues, is harmless because there was no evidence to support either of the exceptions to adoption she claims apply.

When the state seeks to curtail or terminate a parent's fundamental interest in the companionship, care, custody, and management of his or her children, the ensuing judicial proceedings must be "fundamentally fair." (*Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 33.) In such proceedings, an opportunity to be heard " 'must be granted at a meaningful time and in a meaningful manner.' " (*In re Joshua M.* (1998) 66 Cal.App.4th 458, 471.)

The section 366.26 hearing is a critical late stage in a dependency proceeding. At the hearing, the focus shifts away from family reunification and toward the selection and implementation of a permanent plan for the child; adoption and termination of parental rights being the preferred outcome. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309; *In re Ninfa S.* (1998) 62 Cal.App.4th 808, 811.) If adoption is likely, the juvenile court is required to terminate parental rights, unless specified circumstances compel a finding that termination would be detrimental to the child. (§ 366.26, subd. (c)(1).)

The juvenile court may continue the section 366.26 hearing at the request of a parent for good cause, provided that any continuance is not contrary to the best interests of the child. (§ 352, subd. (a).) In considering the child's best interests, "the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (*Ibid.*) A written motion on notice is ordinarily required, although the court may entertain an oral motion upon a showing of good cause for the failure to prepare a written motion. (*In re B.C.* (2011) 192 Cal.App.4th 129, 144.)

"The juvenile court has broad discretion in determining whether to grant a continuance. [Citations.] As a reviewing court, we can reverse an order denying a continuance 'only upon a showing of an abuse of discretion.' " (*In re V.V.* (2010) 188 Cal.App.4th 392, 399.)

Here, mother's attorney asked the juvenile court to continue the hearing for 30 minutes because mother was having car problems and was within seven minutes of arriving. He pointed out she had a significant distance to drive to get there. He also informed the court the three older siblings were accompanying the parents and wanted to express their objections to the adoption of their siblings. In essence, he conveyed that mother wanted a contested hearing and was delayed for reasons beyond her control.

The juvenile court found mother's failure to appear on time was insufficient good cause and there was no evidence that would support anything but a termination of her parental rights.

As we have stated, the section 366.26 hearing represents a critical juncture in a dependency case and the stakes could not be any higher—the permanent severance of a parent's right to his or her child is the goal. Under the circumstances, a parent should be afforded the opportunity to challenge the state's evidence on the critical issues before the court. That said, we are mindful that "time is not an unlimited commodity in today's

busy juvenile courts.” (*Ingrid E. v. Superior Court* (1999) 75 Cal.App.4th 751, 760.)

However, the juvenile court has ample means to control its proceedings. More importantly, the “risk of an erroneous deprivation of a parent’s fundamental interest in his or her child outweighs [any] interest in an expeditious decision.” (*David B. v. Superior Court* (2006) 140 Cal.App.4th 772, 780.)

We conclude the juvenile court’s denial of a short continuance under the circumstances was an abuse of discretion. The record is replete with evidence that the parents struggled to arrive on time because of distance and unreliable transportation. To have granted them a 30-minute continuance would have prejudiced no one and would have afforded them their last chance to defend their parental rights.

We reverse the juvenile court’s order terminating mother’s parental rights and remand for the juvenile court to set a new contested 366.26 hearing. Since we reverse the order terminating mother’s parental rights, we must also reverse the juvenile court’s order terminating Thomas’s parental rights. The California Rules of Court forbid, with limited exceptions, the termination of the rights of only one parent in a section 366.26 hearing. (Cal. Rules of Court, rule 5.725(a)(1).) Accordingly, it is generally held that when the section 366.26 termination of parental rights of one parent is reversed, the termination of the other parent’s rights should be reversed as well. (*In re A.L.* (2010) 190 Cal.App.4th 75, 80.)

DISPOSITION

We reverse the juvenile court’s orders terminating parental rights as to both parents. We remand for the juvenile court to set a new contested section 366.26 hearing.